

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Bihua LIU
U.S. Serial No. : 10/634,526
Confirmation No. : 6893
Filed : August 5, 2003
Examiner : Derris Holt BANKS
Art Unit : 3725
For : FLOWING COLORS OIL PAINTING

Law Offices of Albert Wai-Kit Chan, PLLC
World Plaza, Suite 604
141-07 20th Avenue
Whitestone, New York 11357

August 21, 2009

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST FOR PATENT TERM ADJUSTMENT

A Patent was issued on August 11, 2009 in connection with the above-identified application. Applicant submits herein a request for Patent Term Adjustment under 37 CFR §1.705(b).

A request for Patent Term Adjustment was filed on January 30, 2009. A Decision was issued on June 29, 2009. A Copy of the June 29, 2009 Decision is enclosed as **Exhibit A** (6 pages).

Applicant : Bihua LIU. Atty. Dkt. No. : 1365-US
USSN : 10/634,526 Art Unit : 3725
Filed : 2003-08-05 Date of Request for PTA : 2009-08-21
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Statement of Facts

The Correct Patent Term Adjustment

Applicant submits that the correct patent term adjustment should be **1438** days as a result of:

USPTO delay under 37 CFR §1.702(a)(1) - 135 days
USPTO delay under 37 CFR §1.702(a)(2) - 333 days
USPTO delay under 37 CFR §1.702(a)(4) - 1311 days
USPTO delay under 37 CFR §1.702(a)(4) - 45 days
USPTO delay under 37 CFR §1.702(b) - 1102 days
Total net USPTO delay - 1446 days
Applicant delay under 37 CFR §1.704(c)(8) - 8 days

USPTO Delay Under 37 CFR §1.702(a)(1)

This application was filed on August 5, 2003. The USPTO has failed to mail an Office Action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed. Thus, a period of adjustment of patent term due to examination delay starts from the day after the date that is fourteen months after the date on which the application was filed (i.e. October 6, 2004) and ending on the date of mailing of an action under 35 U.S.C. 132 (i.e. February 17, 2005), totaling **135** days.

USPTO Delay Under 37 CFR §1.702(a)(2)

The USPTO has failed to respond to a reply under 35 U.S.C. 132 not later than four months after the date a reply was filed. Thus, a period of adjustment of patent term due to examination delay starts from the day after the date that is four months after the date on which a reply was filed (i.e. February 17,

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2008) and ending on the date of mailing of a notice of allowance under 35 U.S.C. 151 (i.e. January 14, 2009), totaling **333** days.

USPTO Delay Under 37 CFR§1.702(a)(4)

The USPTO has failed to Issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151. Issue fee was paid on September 8, 2005. Thus, a period of adjustment of patent term due to examination delay starts from the day after the date that is four months after the date on which the issue fee was paid (i.e. January 9, 2006) and ending on the date the patent was issued (i.e. August 11, 2009), totaling **1311** days.

USPTO Delay Under 37 CFR§1.702(a)(4)

The USPTO has failed to Issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151. Issue fee was paid on February 27, 2009. Thus, a period of adjustment of patent term due to examination delay starts from the day after the date that is four months after the date on which the issue fee was paid (i.e. June 28, 2009) and ending on the date the patent was issued (i.e. August 11, 2009), totaling **45** days.

USPTO Delay Under 37 CFR§1.702(b)

The USPTO has failed to issue a patent within three years after the date on which the application was filed. Thus, a period of adjustment of patent term due to examination delay starts from the day after the date that is three years after the date on which the application was filed (i.e. August 6, 2006), and ends on the date a patent was issued (i.e. August 11, 2009), excluding

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any time consumed by (i) continued examination of the application under 35 U.S.C. 132(b); (ii) an interference proceeding under 35 U.S.C. 135(a); (iii) imposition of a secrecy order under 35 U.S.C. 181; (iv) review by the Board of Patent Appeals and Interferences or a Federal court; or (v) any delay in the processing of the application by the Office that was requested by the applicant.

Applicant submits that no time has been consumed by actions (i) to (v) listed above. Hence, the period beginning on August 6, 2006 and ending on August 11, 2009 should be counted as USPTO delay under 37 CFR §1.702(b), totaling **1102** days.

The sum of the above USPTO delay under 37 CFR §1.702(a)(1), 37 CFR §1.702(a)(2), §1.702(a)(4) and §1.702(b), not counting any overlapping periods more than once under §1.703(f), totals **1446** days.

Applicant Delay Under 37 CFR §1.704(c)(8)

Applicant filed a Supplemental Response on October 24, 2007 after filing a Response to an office action on October 16, 2007. Hence, the period of adjustment set forth in 37 CFR § 1.704(c)(8) shall be reduced by the number of days beginning on the day after the date the initial reply was filed (i.e. October 17, 2007) and ending on the date the Supplemental reply was filed (i.e. October 24, 2007), totaling **8** days.

Disputed Applicant Delay

The USPTO indicates that there is a period of 120 days of Applicant delay because of a miscellaneous incoming letter filed

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on January 30, 2009. Applicant submits that there is no such delay.

The January 30, 2009 document was an application for Patent Term Adjustment which was timely filed within two months from the January 14, 2009 mailing date of the Notice of Allowance. A copy of the Image File Wrapper of this application as printed from the USPTO's Private Patent Application Information Retrieval (PAIR) system is enclosed as **Exhibit B** (2 pages).

Accordingly, Applicant submits that Applicant has not caused any period of delay by filing the January 30, 2009 document.

Terminal Disclaimer

Applicant submits that the present application is not subject to a terminal disclaimer.

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Concluding Remarks

In view of the above discussion and calculation, Applicant submits that there is a USPTO delay of 1446 days, and an Applicant delay of 8 days, resulting in a patent term adjustment of 1438 days.

If a telephone interview would be of assistance in rectifying the patent term adjustment of the present application, Applicant's undersigned attorney invites the Examiner to telephone him at the number provided below. No fee is deemed necessary in connection with the filing of this request. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Respectfully submitted,

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Exhibit A



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

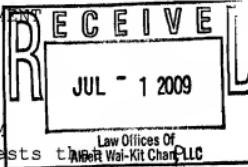
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JUN 29 2009

OFFICE OF PETITIONS

In re Application of :
Bihua Liu :
Application No. 10/634,526 : ON APPLICATION FOR
Filed: August 5, 2003 : PATENT TERM ADJUSTMENT
Atty Docket No. 1365-US :
:



This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT filed on January 30, 2009. Applicant requests that the determination of patent term adjustment be corrected from seventeen (17) days to one thousand eighty-eight (1088) days. Applicant requests this correction, in part, on the basis that the Office will take in excess of three years to issue this patent.

The application for patent term adjustment is GRANTED to the extent indicated.

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is FOUR HUNDRED SIXTY (460) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed,

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being held in abeyance until after the actual patent date with regards to that request. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b). (This is true even

where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.703(b) calculation until the actual date of issuance of the patent has been determined.

Applicant is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

To the extent that the instant application for patent term adjustment requests reconsideration of the PTA at the time of the mailing of the Notice of Allowance, the request is granted to the extent indicated.

On January 14, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date was seventeen (17) days. The period of adjustment was 468 days of PTO delay and 451 days of applicant delay.

On January 30, 2009, the subject application for patent term adjustment was timely filed.¹

¹ Office records indicate that the issue fee was paid on February 27, 2009.

Applicant requests removal of the period of reduction of 451 Days under 37 CFR 1.704(c)(8) for the filing of an information disclosure statement (IDS) on January 9, 2009, after the filing of a reply to a non-final office action. Applicant asserts that no IDS was filed on January 9, 2009.

A review of Office records confirms that no IDS was filed on January 9, 2009. No paper was filed in this application on January 9, 2009. Accordingly, entry of a period of reduction of 451 days is not warranted, and will be removed.

Applicant asserts that a period of reduction of eight (8) days should be entered for the filing of a supplemental reply on October 24, 2007, eight (8) days after the filing of a reply, on October 16, 2007, to the office action mailed on July 16, 2007.

37 CFR 1.704(c)(8) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

Accordingly, entry of a period of reduction of eight (8) days is warranted.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is four hundred sixty (460) days (468 days of office delay reduced by eight (8) days of applicant delay).

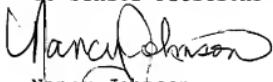
Applicants state that the patent is not subject to a terminal disclaimer.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

PALM INTRANET

PTA Calculations for Application: 10/634526

Application Filing Date:	08/05/2003	PTO Delay (PTO):	468
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	451
Post-Issue Petitions:	0	Total PTA (days):	460
PTO Delay Adjustment:	443		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
68	06/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		8	
67	06/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	451		
57	01/14/2009	MAIL NOTICE OF ALLOWANCE	333		38
56	01/09/2009	REFERENCE CAPTURE ON IDS			
55	01/09/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		451	38
54	01/14/2009	ISSUE REVISION COMPLETED			
53	01/14/2009	DOCUMENT VERIFICATION			
52	01/19/2008	ISSUE REVISION COMPLETED			
51	01/14/2009	DOCUMENT VERIFICATION			
50	01/14/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
49	10/24/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
48	10/22/2008	CORRESPONDENCE ADDRESS CHANGE			
47	07/08/2008	CASE DOCKETED TO EXAMINER IN GAU			
46	06/20/2008	NOTICE OF ALLOWABILITY			
41	11/04/2007	DATE FORWARDED TO EXAMINER			
40	10/24/2007	SUPPLEMENTAL RESPONSE			
39	10/27/2007	DATE FORWARDED TO EXAMINER			
38	10/16/2007	RESPONSE AFTER NON-FINAL ACTION			
37	10/18/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
36	10/17/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
35	10/15/2007	CORRESPONDENCE ADDRESS CHANGE			
34	10/10/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			

33	07/16/2007	MAIL NON-FINAL REJECTION			
32	07/03/2007	NON-FINAL REJECTION			
31	06/20/2007	DATE FORWARDED TO EXAMINER			
30	06/20/2007	WITHDRAWAL OF NOTICE OF ALLOWANCE			
29	11/13/2006	MISCELLANEOUS INCOMING LETTER			
28	11/07/2006	MISCELLANEOUS INCOMING LETTER			
27	09/19/2005	FINISHED INITIAL DATA CAPTURE			
26	09/16/2005	APPLICATION IS CONSIDERED READY FOR ISSUE			
25	09/08/2005	ISSUE FEE PAYMENT VERIFIED			
24	09/08/2005	ISSUE FEE PAYMENT RECEIVED			
23	06/22/2005	EXPORT TO INITIAL DATA CAPTURE			
22	06/17/2005	MAIL NOTICE OF ALLOWANCE			
21	06/17/2005	MAIL EXAMINER'S AMENDMENT			
20	06/15/2005	ISSUE REVISION COMPLETED			
19	06/15/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
18	06/13/2005	EXAMINER'S AMENDMENT COMMUNICATION			
17	06/13/2005	NOTICE OF ALLOWABILITY			
16	05/26/2005	CASE DOCKETED TO EXAMINER IN GAU			
15	05/24/2005	DATE FORWARDED TO EXAMINER			
14	05/16/2005	RESPONSE AFTER NON-FINAL ACTION			
13	05/24/2005	CORRESPONDENCE ADDRESS CHANGE			
12	02/17/2005	MAIL NON-FINAL REJECTION	135	-1	
11	02/16/2005	NON-FINAL REJECTION			
10	10/29/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	10/29/2004	CASE DOCKETED TO EXAMINER IN GAU			
8	07/06/2004	MISCELLANEOUS INCOMING LETTER			
7	09/13/2004	APPLICATION RETURN FROM OIPE			
6	09/13/2004	APPLICATION RETURN TO OIPE			
5	09/13/2004	APPLICATION DISPATCHED FROM OIPE			
4	09/14/2004	APPLICATION IS NOW COMPLETE			
3	10/22/2003	CLEARED BY OIPE CSR			
2	10/07/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	08/05/2003	INITIAL EXAM TEAM NN			

Search Another: Application#

Exhibit B

10/634,526 FLOWING COLORS OIL PAINTING

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This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click PDF.

Bibliographic Data

Mail Room Date	Document Code	Document Description	Document Category	Page Count
07-22-2009	ISSUE.NTF	Issue Notification	PROSECUTION	1
07-10-2009	M327	Miscellaneous Communication to Applicant - No Action Count	PROSECUTION	2
07-03-2009	N417	EFS Acknowledgment Receipt	PROSECUTION	2
07-03-2009	STATUS.LET	Request for status of Application	PROSECUTION	16
06-29-2009	PET.DEC.PUBS	Petition decision routed to the Office of Publications to act on the decision or continue prosecution.	PROSECUTION	6
02-27-2009	IFEE	Issue Fee Payment (PTO-85B)	PROSECUTION	1
02-27-2009	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	2
02-27-2009	N417	EFS Acknowledgment Receipt	PROSECUTION	2
02-27-2009	LET.	Miscellaneous Incoming Letter	PROSECUTION	3
02-27-2009	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1
01-30-2009	PET.OP	Petition for review by the Office of Petitions.	PROSECUTION	11
01-30-2009	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	2
01-30-2009	N417	EFS Acknowledgment Receipt	PROSECUTION	2
01-14-2009	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
01-14-2009	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
01-14-2009	892	List of references cited by examiner	PRIOR ART	1
01-14-2009	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
01-14-2009	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
01-14-2009	FWCLM	Index of Claims	PROSECUTION	2
01-14-2009	BIB	Bibliographic Data Sheet	PROSECUTION	1
12-17-2008	892	List of references cited by examiner	PRIOR ART	1
11-21-2008	STATUS.LET	Request for status of Application	PROSECUTION	3
11-21-2008	N417	EFS Acknowledgment Receipt	PROSECUTION	2
10-24-2008	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
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10-20-2008	PA..	Power of Attorney	PROSECUTION	1
10-20-2008	OATH	Oath or Declaration filed	PROSECUTION	2
10-20-2008	N417	EFS Acknowledgment Receipt	PROSECUTION	2
07-14-2008	STATUS.LET	Request for status of Application	PROSECUTION	1
05-22-2008	SRNT	Examiner's search strategy and results	PROSECUTION	6
10-27-2007	BIB	Bibliographic Data Sheet	PROSECUTION	1
10-24-2007	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	4
10-24-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
10-18-2007	EXIN	Examiner Interview Summary Record (PTOL - 413)	PROSECUTION	2
10-17-2007	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
10-17-2007	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
10-16-2007	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1

10-16-2007	SPEC	Specification	PROSECUTION	1
10-16-2007	CLM	Claims	PROSECUTION	3
10-16-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	13
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10-16-2007	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1
10-08-2007	PA..	Power of Attorney	PROSECUTION	1
10-08-2007	N117	EFS Acknowledgment Receipt	PROSECUTION	2
10-08-2007	PA..	Power of Attorney	PROSECUTION	2
10-08-2007	N417	EFS Acknowledgment Receipt	PROSECUTION	2
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07-16-2007	FWCLM	Index of Claims	PROSECUTION	1
07-16-2007	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
06-29-2007	SRNT	Examiner's search strategy and results	PROSECUTION	1
06-20-2007	N416	Notice of Withdrawal from Issue Branch (PTOL-67)	PROSECUTION	1
12-05-2006	N417	EFS Acknowledgment Receipt	PROSECUTION	2
11-30-2006	STATUS.LET	Request for status of Application	PROSECUTION	1
11-13-2006	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
11-07-2006	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
09-08-2005	IFEE	Issue Fee Payment (PTO-85B)	PROSECUTION	1
09-08-2005	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1
06-17-2005	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
06-17-2005	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	6
06-17-2005	NFDR	Notice of Formal Drawings Required	PROSECUTION	1
06-17-2005	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
06-17-2005	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
06-17-2005	FWCLM	Index of Claims	PROSECUTION	1
06-17-2005	BIB	Bibliographic Data Sheet	PROSECUTION	1
06-10-2005	SRNT	Examiner's search strategy and results	PROSECUTION	3
05-25-2005	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1
05-25-2005	WCLM	Claims Worksheet (PTO-2022)	PROSECUTION	1
05-16-2005	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
05-16-2005	CLM	Claims	PROSECUTION	3
05-16-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
05-16-2005	C.AD	Change of Address	PROSECUTION	2
02-17-2005	CTNF	Non-Final Rejection	PROSECUTION	8
02-17-2005	892	List of references cited by examiner	PRIOR ART	1
02-17-2005	NPL	NPL Documents	PRIOR ART	4
02-17-2005	NPL	NPL Documents	PRIOR ART	4
02-17-2005	NPL	NPL Documents	PRIOR ART	2
02-17-2005	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
02-17-2005	FWCLM	Index of Claims	PROSECUTION	1
02-15-2005	SRNT	Examiner's search strategy and results	PROSECUTION	2
07-06-2004	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
08-05-2003	TRNA	Transmittal of New Application	PROSECUTION	2
08-05-2003	SPEC	Specification	PROSECUTION	7
08-05-2003	OATH	Oath or Declaration filed	PROSECUTION	2

08-05-2003	ADS	Application Data Sheet	PROSECUTION	2
08-05-2003	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1
08-05-2003	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1
08-05-2003	CLM	Claims	PROSECUTION	3
08-05-2003	ABST	Abstract	PROSECUTION	1
08-05-2003	DRW	Drawings-only black and white line drawings	PROSECUTION	1

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